OPEN PARLIAMENT FOR LOCAL GOVERNMENT: SÃO PAULO'S EXPERIENCE

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In recent years parliaments have begun to exploit advances in information and communication technologies (ICT) to support their many functions and modernize their institutions. While the executive branch has taken steps to address these issues at national, regional and global levels, parliaments need to play a more proactive policymaking role as promoter of the principles of the World Summit on the Information Society[1] through their legislative and oversight responsibilities and to be more active in applying new technologies in their own environment.

It is evident that ICT are one of the important tools that parliament can use as it seeks to realize these values and objectives. Three broad, non-exhaustive examples should be considered. First, transparency, accessibility and accountability, as well as people's participation in the democratic process, largely depend on the quality of information available to members of parliaments, parliamentary administrations, media and the society at large, and on citizens' access to parliamentary proceedings and documents. Both can be improved through ICT applications, which in turn could dramatically strengthen the policymaking process.

Second, the efficiency of the internal business practices, of services to members and staff, and the performance of the organization as a whole may impact on the effectiveness with which parliament carries out its legislative process and scrutiny functions, and members their duties. Both the efficiency and effectiveness can be increased by a sound adoption of new technology coupled, if necessary, with organizational re-engineering. Third, full participation in the emerging global information network is crucial for an institution that wants to avoid marginalization. Parliaments today are confronted with a new reality of information integration and knowledge exchange, as well as with an increasing demand for inter-parliamentary cooperation. And that requires a change in the way parliaments

[1] World Summit on the Information Society (WSIS), *Geneva Declaration of Principles*. [https://www.itu.int/dms_pub/itu-s/md/03/wsis/doc/S03-WSIS-DOC-0004!!PDF-E.pdf]

act internally and in the way they interact with the outside world, including through the use of ICT.
Below, we question to what extent it is possible to control social changes through the insertion of new elements in the legislation. We will turn to the systemic approach, as developed by Niklas Luhmann, to support the analysis of this question, which initially requires that it be recalled[2].

§ 1 – BRIEF EXPLANATIONS ON LUHMANN'S THOUGHT REGARDING LEGAL SYSTEM

The Theory of Systems developed by Luhmann is guided by difference and not by unity, based on a thought that conceives the legal system from a system/environment distinction.
To indicate system means, in fact, to distinguish one side of another: environment. Thus, the unity of the system is driven by the distinction between system and environment.
Systems, according to Luhmann, presuppose themselves, perform their reproduction with their own operations, which is called the autopoietic operational closure.
In such a way, the autonomy of the system arises as a consequence of its operational closure.[3] Autopoiesis assumes that the system reproduces all its elements from its own operations.
In fact, the closure of the legal system allows it to repeat its demarcation in a continuously operational manner and consolidate itself historically in order to distinguish itself from other systems.
The system selects and associates meaningful communicative events that impose on the system and use their structures, but are not part of the system.
Communication, according to Luhmann, is not created by anything that is found in the environment, it is produced, recursively, by itself, so that communication produces communication by means of communication[4], and is, therefore, also operatively closed or autopoietic, producer of itself.
The autopoiesis of the Luhmann system rests, therefore, in a semantic closure. Thus, legal communication exists only in the legal system, in no other system.

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[2] Although Luhmann's theoretical production is spread through dozens of books and articles, for the purposes of this article we can point out some works as more meaningful for the understanding of his Theory of Systems in Portuguese: *Legitimação pelo Procedimento*, Brasília, UnB, 1980; *Sociologia do Direito I,* Rio de Janeiro, Tempo Brasileiro, 1985; *Sociologia do Direito II*, Rio de Janeiro, Tempo Brasileiro, 1985; *Sistemas Sociais: esboço de uma teoria geral*, Petrópolis, Vozes, 2016; *O Direito da Sociedade*, São Paulo, Martins Fontes, 2016. In addition to these editions, some works on Luhmann's Theory of Systems in Portuguese are worth mentioning: O. VILLAS BÔAS FILHO, *Teoria dos sistemas e o Direito brasileiro*, São Paulo, Saraiva, 2009; G. L. GONÇALVES e O. VILLAS BÔAS FILHO. *Teoria dos sistemas sociais: Direito e sociedade na obra de Niklas Luhmann*, São Paulo, Saraiva, 2013; U. S. VIANA, *Direito e justiça em Niklas Luhmann*, Porto Alegre, Fabris Editor, 2013.
[3] *See* G. GONÇALVES, O. VILLAS BÔAS FILHO. *Teoria dos sistemas sociais: Direito e Sociedade na Obra de Niklas Luhmann*. São Paulo, Saraiva, 2015, p. 43.
[4] *Idem*, p. 57.

For this reason, systems theory does not observe the norm as such or as a component of a broader legal text, but rather its respective use in a case (communication event).
According to the theory, therefore, there are fleeting legal elements, such as administrative acts and judicial sentences, in which norms function as structures for repetitions, for new uses in ever different situations.
Communication is the component that excludes the entire system from its environment. In communication, understanding is fundamental to the completion of a communicative episode. Note that it does not require a great understanding, only the possibility of access to the communication, to provide the next communication.
Thus, human consciousness participates in the legal system through the sense that is transmitted in legal communications, the meaning of expressions or texts, but is not internal to the system, remaining in its environment, thus leaving people excluded from the legal system, in what is characterized as a methodological antihumanism, for the purpose of producing knowledge of a certain type, not to be confused with a disrespectful deontological proposal of humanitarian principles.
As Orlando Villas Bôas Filho says, Luhmann draws attention to the fact that the relationship between law and society is ambiguous, since, on the one hand, society is the environment of law and, on the other, all operations of law take place in society once they are based on communications (a particular type of social system that internally comprises all communications)[5]. The result from this is that "there is no law outside society, but only law in society. However, law is not confused with society. It is, rather, a subsystem that composes it"[6].
As can be seen, the legal system and the human environment cannot be said to be independent of one another, given the constant structural communications between them, termed interpenetration.
Structural couplings are used by Luhmann to precisely demonstrate the relationship of one system to another. The constitution of a country is an example of a structural coupling between the legal system and politics. The systems, undeniably, suffer what is called reciprocal irritations, provoking each other to react, but always from their own form of communication.
It is worth emphasizing that the existence of these couplings does not exclude autopoiesis. Indeed, no thought can leave the legal system and penetrate human consciousness if it is not taken seriously as a thought. Similarly, individual consciousness cannot interfere directly with the legal system.

[5] *See* O. V. BÔAS FILHO, *Teoria dos sistemas e o Direito brasileiro*,São Paulo, Saraiva, 2009, p. 141.
[6] *See* G. L. GONÇALVES e O. VILLAS BÔAS FILHO, *Teoria dos sistemas sociais, Direito e sociedade na obra de Niklas Luhmann*. São Paulo, Saraiva, 2015, p. 106-107.

Since the system is made of communications, the elements of the system can only be considered as events connected to the moment.

The time for Luhmann is, therefore, related to an event, being made of "updates of significant possibilities that, at the time of its realization, disappear again"[7]. Law is always present, in a punctual moment, and only in it.

Thus, for the legal system normativity is not given as stable in time, since it reproduces the normative sense based on the always current and contextual employment of legal statements, which does not prevent the reutilization of the same rules in other situations. This reuse, however, is no longer seen as a past that necessarily prevails in the future, repeating itself continuously and imperatively.[8]

The legal system differs from other systems and becomes autonomous by the type of communication it performs, legal communication, which, of course, is distinct from other communications, such as economics or politics.

For Luhmann, the autonomy of legal communication is demonstrated by the terms "functional specification of Law" and "binary coding". "Only the two acquisitions together, function and code, allow law-specific operations to be clearly distinguished from other communications and thus reproduce from themselves, with only marginal imprecisions"[9].

Luhmann understands by "functional specification" the orientation of the legal system by a specifically social problem, whose successful solution cannot be replaced by any other functional system, and, therefore, must be diffused into society[10].

The specifically social function of the legal system consists in guaranteeing normative expectations secured against deceptions in a counterfactual way - possibly through sanctioned (political) power, in the event of non-compliance. The security of expectation is relative to the norm as communication of the Law and not to the expectation of the individual persons.[11]

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[7] According to Thomas Vesting, Luhmann emphasizes these ideas in the sense that, at the moment of the operation of the (political) system, of the decision, the system generates itself with the help of time by re-addressing the theme of time in time, in the form of *re-entry* (In *Teoria do Direito: uma Introdução*. São Paulo, Saraiva, 2015, p. 140).

[8] As Vesting establishes: "For the theory of systems, the use of Law is not the more or less obligatory 'application' under the logical aspect of a regulatory material that must be presumed as lacking in gaps; legal statements are no longer situated on another higher category level in relation to their use as it was in legal positivism. On the contrary, legal communications use systemic structures and, in doing so, transform their meaning, in the next operation, in order to re-use and transform the previously transformed structure. The system is constantly in motion, and when it works, it always does so on the basis of a double movement: it does not masquerade repeatable elements of condensed situations ('condensation') and maintains structures (codes, programs) as long as they appear to be worthy of being maintained at the time of operation ('confirmation')" (*Idem,* p. 153).

[9] *Ibidem,* p. 143.

[10] *Ibidem*, p. 144.

[11] N. LUHMANN. *Sistemas Sociais: esboço de uma teoria geral*, Petrópolis, Vozes, 2016, pp. 119-120.

The processing of normative expectations is an attempt by modern society to "at least, in the field of expectations, adjust to a still unknown, genuinely uncertain future"[12], emphasizing again the dynamic stability of autopoietic systems.

The legal system also requires, for autopoietic closure, its own codification: lawful/unlawful, codification that regulates the oscillation between lawfulness, as a positive value, and illegality, as a negative value.

In spite of its closure, the autopoietic system, through re-entry, has the possibility of reflecting the environment within itself, according to its own communicative possibilities, of the capacity to allow the distinction to re-enter into what it distinguished itself, referred to as self-reference/heteroreference.

In order to understand the phenomenon of "re-entry" it is fundamental to grasp the concept of complexity, which according to Luhmann is the number of possible relationships that can be established between elements. It is observed from both a quantitative and a qualitative perspective. The reduction of the quantity for quality presupposes the establishment of criteria for the choice of relations, reducing complexity, and that possible relations are left aside, implying, therefore, selection.[13]

For selection to occur, it is necessary to have structures, decision-making criteria and programs that can only be formulated as systems, which justify the impossibility of the environment to operate re-entry.

Thus, from this perspective, system means the mechanism capable of endowing the complexity of quality, selecting relevant relations between elements in a given context.

There are two fundamental postulates of the Luhmannian theory: the complexity of the environment (qualitative) is greater than that of the system (quantitative), for making choices possible, maintaining the system a range of possible relations that could have been adopted and that remain available for future selections (contingency).

Considering that every selection distances alternatives, the system always coexists with the doubt about the consequences in case the selection has relapsed on a possibility different from the one that was chosen.

This uncertainty is precisely what will stimulate a new selection, which in turn will activate a new process and so on. As we can see, the reality of the system is, for Luhmann, contingency.

Therefore, all that is could be otherwise, making it necessary to fix structures that reduce complexity, from selective operations that restrict the possibilities of relationship between elements.

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[12] *Idem,* p. 120. in a similar sense, K. LADEUR. "Gesetzesinterpretation, 'Richterrecht', und Konventionsbildung in kognitivistischer Perspektive". *ARSP: Archiv für Rechts- und Sozialphilosophie.* N. 77 (1991), p. 176 ('The function of law consists, in other words, in enabling the formation of expectations in a society which, itself, becomes more and more a problem'). On temporal bonding as a function of Law, see K. GUNTHER, "Vom Zeitkern des Rechts", Rechtshistorisches Journal 14 (1995), p. 13 and following.

[13] *See* N. LUHMANN. *Sistemas Sociais: esboço de uma teoria geral.* Petrópolis, Vozes, 2016, pp. 119-120.

Such structures are, in society, structures of expectations which, if they do not make it possible to suppress the complexity of contingency, at least allow them to maintain a tolerable level.

The closing of Law is not affected as long as it is oriented exclusively by the lawful/unlawful schematism. "Whenever legal statements are made (at least implicitly) and the validity of Law is knowingly enforced, communication is attributed to the legal system".[14]

The legal system learns, like no other, to separate norms (self-reference) from facts (heteroreference), and tries to avoid any attempt to soften this differentiation, including deducing rules from facts[15].

Only because social systems begin to specify the operations themselves and process them according to the binary code itself and the programs of which they are part that they find their own access to the environment, a proper way of processing the unstructured complexity.[16]

Thus, the evolution of Law is not determined by external phenomena, but by its own choices. It evolves without any project, but according to the uncertainty regarding the consistency and adequacy of its selections, assuming an essentially changeable and decision-based character.

It is also worth noting that autopoietic systems can only exist in the plural. The legal system, for example, is defined not only in relation to the environment, but also in relation to other functional systems (e.g. economics and politics), which have their own codifications and functions.

As we have seen, Law is not confused with society; it is a subsystem that composes it. However, Law and society use the same element in their autopoiesis – communication.

For Luhmann, what matters is that Law fulfills its function of counterfactual stabilization of normative expectations, the motivations that underlie the behaviors matter little to the accomplishment of such function.

The binding force of a contingent and changeable legal system is guaranteed in obtaining a generalized provision to accept decisions of content not yet defined.

In Luhmann's theory, justice would serve as a contingency formula for the legal system, whose purpose would be precisely to provide a control of consistency to legal decisions.

Thus, justice no longer has any value connotation, becoming strictly related to the function of stabilization of normative expectations developed by Law, being associated with equality.

Justice consists for Luhmann in the egalitarian and solid treatment of legal cases, ultimately expressing the very structure of the conditional program to which one turns: "given the fact 'x', 'y' is legal".

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[14] *See* T. VESTING. *Teoria do Direito: uma introdução*, p. 145.

[15] *See* O. VILLAS BÔAS FILHO. *Teoria dos sistemas e o Direito brasileiro*. São Paulo, Saraiva, 2009, p. 141.

[16] *See* T. VESTING. *Teoria do Direito: uma introdução*, pp. 148-150.

§ 2 – OPEN GOVERNMENT AS A TOOL FOR COMMUNICATION BETWEEN GOVERNMENT AND CITIZENS

In Brazil, the first step towards access to information was given through the application of the Transparency Law (Federal Law 12,527), in November 2011, known as the Access to Information Law (AIL)[17]. The law deals with procedures that must be adopted by municipal, state and federal bodies to guarantee access to information on public actions to citizens.

Said law provides for the procedures to be observed by the Union, States, Federal District and Municipalities, in order to guarantee access to information provided in item XXXIII of art. 5, item II of paragraph 3 of art. 37 and in paragraph 2 of art. 216 of the Federal Constitution.

According to the text, it is the right of all Brazilians to obtain, in a transparent and clear way, in easy-to-understand language, information of particular, collective or general interest in the actions carried out by the public spheres, being up to the agencies and entities of the public power, observing the standards and procedures applicable, to ensure the transparent management of information, providing broad access to and dissemination of information; the protection of information, ensuring its availability, authenticity and integrity; the protection of confidential information and personal information, observing its availability, authenticity, integrity and possible restriction of access[18].

According to art. 1º of AIL, the following are subordinate to its regime: the public organs that are part of the direct administration of the Executive and Legislative, including the Public Finance Courts, as well as the Judiciary and the Public Prosecution Service (item I); and municipalities, public foundations, public companies, mixed-capital companies and other entities directly or indirectly controlled by the Federal Government, States, Federal District and Municipalities (item II).

By the aforementioned norm it is intended to ensure the fundamental right of access to information and must be materialized in accordance with the basic principles of public administration and with the following guidelines: observance of publicity as general precept and secrecy as an exception (item I); disclosure of information of public interest, regardless of requests (item II); the use of media made possible through information technology (item III); fostering the development of a culture of transparency in public administration (item IV); and the development of social control of public administration (item V).

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[17] *See* BRAZIL. *Lei No 12.527, de 18 de novembro de 2011:* [http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm].

[18] In this sense, Eneida Desiree Salgado identifies that AIL provides Brazilian citizens with relevant tools to scrutinize and control the activities of the three branches of government, ensuring the observance of public interest (*Lei de Acesso à Informação: Lei n.º 12.527/2011 e Decreto nº 7.724/2012*, São Paulo, Atlas, 2015, p. 3).

These principles and their practical consequences are defined by LAI considering the following concepts, as mentioned in article 4: information: data, processed or not, that can be used for production and transmission of knowledge, contained in any medium, support or format (item I); document: unit of record of information, whatever the medium or format (item II); confidential information: that subject temporarily to the restriction of public access because of its indispensability for the security of society and the State (item III); personal information: that related to the natural person identified or identifiable (item IV); Information processing: set of actions related to the production, reception, classification, use, access, reproduction, transmission, transmission, distribution, archiving, storage, disposal, evaluation, destination or control of the information (item V); availability: quality of information that may be known and used by authorized individuals, equipment or systems (item VI); authenticity: the quality of information that has been produced, issued, received or modified by a particular individual, equipment or system (item VII); integrity: unmodified information quality, including origin, transit and destination (item VIII); primary: quality of the information collected at the source, with the maximum of possible detail, without modifications (item IX).

Among the information that must be disclosed, regardless of the request of any citizen, are: those pertinent to the administration of the public patrimony; the use of public resources; bidding notice; administrative contracts; monitoring instruments and results of programs and projects, as well as their goals and indicators; the results of inspections, audits and rendering of accounts.

The law also says in its article 8 that it is the duty of public bodies and entities to promote, regardless of requirements, the disclosure in a place easily accessible, within their competences, of information of collective or general interest that they produced or guarded.

The disclosure of the information referred in the AIL, as said in its article 8, must include at least: the registration of the competencies and organizational structure, addresses and telephones of the respective units and hours of public service (item I); the records of any transfers or transfers of financial resources (item II); records of expenses (item III); the information regarding bidding procedures, including the respective notices and results, as well as all contracts entered into (item IV); general data for the monitoring of programs, actions, projects and works of organs and entities (item V); and answers to frequently asked questions of society (section VI).

For compliance purposes, public bodies and entities should use all the legitimate means and instruments at their disposal, and it is mandatory to disseminate them on official websites of the world wide web.For compliance, public bodies and entities must use all the legitimate means and instruments at their disposal, and it is

mandatory to disseminate them on official websites of the world wide web (Internet).

The sites should, in the form of a regulation, meet, among others, the following requirements: contain a search tool for content that allows access to information in an objective, transparent, clear and easy-to-understand language; enable the recording of reports in various electronic formats, including open and non-proprietary, such as spreadsheets and text, to facilitate the analysis of information; enable automated access by external systems in open, structured and machine readable formats; disseminate in detail the formats used for structuring the information; ensure the authenticity and integrity of the information available for access; keep updated information available for access; indicate location and instructions that allow the interested party to communicate, electronically or by telephone, with the agency or entity that owns the site; adopt the necessary measures to guarantee the accessibility of content for persons with disabilities, pursuant to art. 17 of Law No. 10 098, of December 19, 2000, and of art. 9 of the Convention on the Rights of Persons with Disabilities, approved by Legislative Decree No. 186 of July 9, 2008.

However, the Brazilian Transparency Law still lacks real effectiveness. The issue of open government and the use of social networks by public administrations still appears timidly in Brazil with examples in federal, state and city governments. As Juliano Heinen states, it is necessary to make real the ideas of morality and probity in Brazilian Public Administration, and from AIL it is possible to practice more effective social control through an environment of cooperation and transparency[19].

Faced with so many possibilities of communication, it is noticed that digital media are not only a means of interaction between the various players, but a new perspective that flourishes in this scenario, of managing information as a strategic resource of institutions.

The city of São Paulo is known as a locomotive that pulls and drives the national economy and, only in 2016, five years after the implementation of the Transparency Law, the city of São Paulo presented, on November 29, a municipal plan with proposals to ensure the transparency of public bodies in the coming years, and yet the proposals need to be approved by the 18 ministries that have gone through the planning process. When the measures are validated, they must correspond to the biennium 2017-2018.

The concept of open Government is directly linked to the cultural issues of citizens and governments. Management that adopts an open government policy is an ever-evolving administration, such as the "beta" version of software, where citizens use management and pass on valuable information about the characteristics of management and what it should improve to meet the demands of a particular region. It was possible to verify that none of the

[19] *See Comentários à Lei de Acesso à Informação: Lei n.º 12.527/2011*. 2a. ed., Belo Horizonte, Forum, 2015, p. 22.

municipal administrations of the metropolitan region of São Paulo has a complete open government policy, at most we can identify participation and *ombudsman* channels, but there are no online platforms where the citizen can participate and collaborate with the expertise he has. The issue of transparency, driven by obligations established in the Fiscal Responsibility Law[20], presents data that cannot be processed and are often confused, difficult for the author to understand. In Brazil, the best strategy for the dissemination of the use of the Internet in the public function and the definition of the role of the State in the sector have been the subject of increasing studies and debates, all of them pointing out the advantages of promoting e-government policies[21].

In this sense, apprehensive of the slow evolution of public transparency at the time and receptive to the aggregation of collective intelligence in the Legislative Branch and to the transparency of the parliamentary performance, as Alderman of the city of São Paulo I presented, in 2013, Bill No. 307/2013, which was sanctioned by the Mayor on November 19, 2016, giving rise to Law No. 16 574 that determines the use of operating systems and other free software on Municipal Administration computers. The Law applies both to the Direct Administration (secretariats and "subprefeituras", similar to boroughs) and to the Indirect Administration (public companies, joint stock companies, municipalities and public foundations).

With the new measure, software that will be adopted preferably by the Administration should be open source, allowing servers and citizens to appropriate the type of technology that the City has been using, and thus help in the improvement of these tools, proposing modifications or even customizing according to specific interests.

Currently, the City Hall works with proprietary software, which are those that require the acquisition of use licenses to execute them, and whose source code is not accessible for the user to study or make changes aimed at improving the program. From the implementation of the Law, it is expected that the City Hall will save money by purchasing proprietary software licenses, as these will only be used upon technical justification proving the inefficiency of the free option in comparison with the proprietary one.

According to the City Hall of São Paulo itself, the new Law is also essential for the municipality to consolidate its policy of transparency and social participation, involving its citizens in the

[20] In this sense: H. MILESKI, *O Estado Contemporâneo e a Corrupção*. Belo Horizonte, Forum, 2015, p. 215.

[21] As defined by Marco Aurelio Ruediger, among other scholars, "e-government" focuses on the use of ICT applied to a wide range of governmental functions, and in particular, to society, involving the following relationships: (a) applications aimed at the government-to-business segment [G2B]; (B) applications focused on the government-citizen relationship [G2C]; (C) applications related to governmental-governmental strategies [G2G]. ("Governo eletrônico e democracia - uma análise preliminar dos impactos e potencialidades da administração pública". *Organização e Sociedade*. Vol.9, n.25, 2002. p.29-31.

process of auditing municipal technological tools and developing new devices that best meet the demands the citizens. In order for the participation in the technological innovation of the municipality to be even more effective, the approved Law foresees that the software will use licenses that expressly authorize its free transfer, modification and distribution of electronic copies. This applies to software for internal use and to those available to provide services to the population. In this way, users have more autonomy to work with government software and propagate their advances.

It is concluded, then, that governments need to invest in public policies on open Government plans and also open other channels for discussion. Brazilian government sites need to be more collaborative, allowing people to participate with suggestions for improving public administration. What we find, for the most part, are institutional websites that offer payment services focused on collection. The issues that need to be taken into account when talking about open Government is that governments need to encourage the publication of information online, as these data on municipal administration are public and must be available to all people. Improve the quality of government information by facilitating access to data and reducing electronic bureaucracy. Simplify the information so that the citizen can find it faster, but also take care to understand the information published and disclosed by the government. In order to create and institutionalize a culture of open government, public officials must be aware of the importance of their role in providing the necessary information to the population and appropriating collaborative tools to make this information available on the government website. Favoring open Government will come not only from laws but also from the awareness that political players need to have of the importance of collaborative governance in improving public administration.

§ 3 – Open Government as a Tool for Accountability and Prevention of Corruption

Access to ICT alone does not seem sufficient for the citizen to use them as a tool to participate in the management of urban space, and the initiative of the Public Power is essential in order to open up to the possibilities of transforming social life and of the state that arise in an intelligent city. Likewise, it is necessary for the citizen to assume his or her role as protagonist, alone or collectively, for the proper use of channels of participation and oversight of the activities of the Public Power. It is essential for this purpose to disseminate the concept of accountability beyond academic space, with its incorporation into the thinking of the population in general.

In general terms, accountability can be defined as the requirement of transparency and commitment of the government in favor of accountability to society, as well as the effective accountability of the rulers for their management actions. As Ana Maria Campos affirms, "only from the organization of vigilant citizens and aware of their rights will there be a condition for accountability. There will not be such a condition as long as the people define themselves as guarded and the state as guardian"[22].

The relationship between the State and civil society, in an accountability-oriented perspective, depends essentially on the production and availability of public information and reliable accounts by the government, duly audited by external and internal controls of public bodies, from which citizens can define their interests based on concrete data and actively participate in public decisions; On the other hand, without an organized civil society there is no pressure for public managers to promote accountability.

At the level of popular participation, one of the most sensitive points in the relationship between State and civil society in Brazil is exactly a deficit of accountability for which both sectors collaborated until recently: while the members of the State were refractory to accountability for their actions civil society, on the other hand, was silent; with this inefficiency and corruption found a fertile field throughout the twentieth century in Brazil.

It is evident that this state of affairs has been gradually changing, in particular by the public commotion caused by corruption scandals such as the "Mensalão" scandal in the last decade and "Operation Car Wash" in the current decade. With this, civil society began to demand greater transparency and supervision in the use of public resources and in the relations between the State and private initiative.

And in convergence with this change in the perception of Brazilian civil society regarding corruption, it is incumbent on the State to play its part and foster new tools aimed at ensuring the desired accountability, and it is up to the city of São Paulo to take advantage of this favorable institutional environment.

In this sense, I proposed the Draft Law 01/2017, aimed at defining a City Policy for the Prevention of Corruption compatible with what is expected of a smart city and aimed at preventing the practice of acts harmful to property and the treasury through the implementation of a information transparency policy, strengthening and qualification of Social

[22] In A. M. CAMPOS, "Accountability: quando poderemos traduzi-la para o português?". *Revista de Administração Pública*, Vol. 24, No 2, Rio de Janeiro, feb/apr.1990, p. 36. As the author correctly points out, "under the fallacious premise that administration and politics are distinct processes, the practice of accountability by the official bureaucracy would be a matter of developing bureaucratic control mechanisms. Recognizing that bureaucracies do indeed play an active role in formulating politics, we understand that we are relying on a flawed framework for the problem of accountability. Although necessary, internal control mechanisms are not enough to ensure that the public service serves its clientele in accordance with the normative standards of democratic government "(*Idem*, 34).

Control, and the guarantee of isonomy, economy, efficiency, effectiveness and effectiveness as fundamental elements of public decisions, with popular participation as a central factor for its success.

And this participation will take place both by traditional mechanisms of popular representation and by tools convergent to the transformation process of São Paulo in a smart city, among others:

1) Provision of preferential use of information technology and virtual media through the mandatory provision of information over the Internet and the use of free software in all cases where this option is possible and the necessary support to civil society in especially to citizens exercising public functions of social control in collegiate organs of the municipal administration, in the use of these resources;

2) The requirement that the systems to be developed by City Administration bodies preferably use open source programs, accessible uninterrupted through the Internet, prioritizing their standardization and identifying cases of occurrence of prevention and possible deviations whose investigation will be necessary;

3) The primacy of simple language, accessible to citizens and enabling a clear understanding of what is being circulated;

4) Promotion of the integration and complementation of data and public information made available by all levels of local Public Power and support to the initiatives of civil society and research institutions in the development of applications that facilitate the access, analysis and interpretation of these data;

5) The full support and cooperation to the practices and actions of social control carried out by civil society and the press and a constant and systematic effort towards the qualification and training of citizens who exercise social control functions, especially in collegiate bodies;

6) The duty of full publicity to be fulfilled as a rule by the Executive Branch and the City Administration in relation to their agendas during office hours, as well as any document, study, opinion or information sent to their office trying to a matter of public interest and coming from private entities.

The central institution for this policy will be the City Council for Transparency and Social Control, a permanent and autonomous collegiate body with advisory, deliberative, appraiser and oversight roles about the City Policy for the Prevention of Corruption.

It is the responsibility of the Council, as part of the project, to plan, articulate and implement, with the assistance and technical advice of municipal public bodies, civil society entities, research institutions and interested citizens, tools for transparency and efficiency policies in public administration and of social control.

In terms of representation, the Council will have a joint composition between members chosen by the City of São Paulo and by civil society, with meetings open to the public, with a

public agenda publicly published not less than 48 hours before they are held and documented in audio and video.

With this promotion of popular participation, together with the strategic use of ICT in the implementation of the proposals contained in the project, the conviction is that we will have a great step in defining a smart citizenship in São Paulo, fully adequate to what is expected in a smart city. Thus, in a smart city, social participation in matters related to governance of urban space assumes a position not only of fundamental right, but also of an authentic duty to be exercised by citizens in parallel with the duties legally established to the Public Power.